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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,963	01/29/2004	Kazuo Shiota	2091-0309P	2340

2292 7590 06/19/2009

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EXAMINER	
RASHID, DAVID	

ART UNIT	PAPER NUMBER
2624	

NOTIFICATION DATE	DELIVERY MODE
06/19/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/765,963	SHIOTA ET AL.	
	Examiner	Art Unit	
	DAVID P. RASHID	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 June 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,5,9,11-16 and 18-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,5,9,11-16 and 18-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Table of Contents

Continued Examination Under 37 C.F.R. § 1.114

[1] A request for continued examination under 37 C.F.R. § 1.114, including the fee set forth in 37 C.F.R. § 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. § 1.114, and the fee set forth in 37 C.F.R. § 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 C.F.R. § 1.114. Applicant's submission filed on Jun. 2, 2009 has been entered.

Amendments & Claim Status

[2] This office action is responsive to Amendment After Final Action Under 37 C.F.R. 1.116 (hereinafter "Amendment") received May 4, 2009. Claims 1-2, 5, 9, 11-16, and 18-21 remain pending.

Claim Rejections - 35 U.S.C. § 112

[3] In response to Amendment at 7-8, the previous § 112 rejections are withdrawn.

Claim Rejections - 35 U.S.C. § 101

[4] In response to Amendment at 7, the previous § 101 rejections are withdrawn.

Response to Arguments

Remarks Unpersuasive regarding Rejections Under 35 U.S.C. § 103

[5] Amendment at 8-9 regarding 35 U.S.C. § 103 rejections with respect to claims 27 and 29-32 have been respectfully and fully considered, but are not found persuasive.

> In contrast, metadata in Kowald is generated by cameras (see [0035], lines 12-14) or by the classification system 508 (see [0036], lines 6-8). The metadata is set and stored before the classification by the camera, or during the classification by the classification system 508.
>
> However, claim 1 clearly requires the selection condition setting means, which is an equipment of the qualified photographic image extracting means and therefore separate from the classifying means, sets and stores setting conditions after the classifying means classifies the photographic images into similar photographic image groups. By providing such a structure, this enables the selection condition setting means to set the selection for each similar photographic image group defined by the classifying means.

Amendment at 9.

However, the § 103 rejection refers to classification occurring at fig. 5, items 522, 524. See also Kowald at ¶¶0037-0038. The selection condition setting means (the processor used at the video editing system item 514 for the user to extract metadata selection conditions from metadata memory item item 526) occurs after classification by the classifying means items 522, 524. Additionally, the selection condition setting means in fact is used after all classifications at fig. 5, including items 522, 524 used in the rejection, as well as what is pointed out by Applicant ("cameras (see [0035], lines 12-14) or by the classification system 508 (see [0036], lines 6-8)").

Claim Rejections - 35 U.S.C. § 102

[6] The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Kowald

[7] **Claim 21** is rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pub. No. 2003/0002715 (filed Dec. 7, 2000, *hereinafter* "Kowald").

Regarding **claim 21**, while *Kowald* discloses a method, performed by a photographic image ("photographer…capturing the image or image sequence" at ¶0037) selecting apparatus (fig. 5), for selecting photographic images, comprising:

classifying, at a classifying portion (fig. 5, items 522, 524), a plurality of photographic images into similar photographic image groups ("[t]he visual language classification system 522 outputs classification data 524, configured as further metadata, which is associated with each image…" at ¶0036; metadata for "features including landscape features…or other particular shapes…" at ¶0037; metadata for "time code and date data" at ¶0051), each of the photographic image groups comprising photographic images which are similar to each other (photographic images in a video stream are "similar" to each other), the similarities being determined by ("content analysis to analyse the images residing in the store 510", at ¶0037) digital data ("digital video" at ¶0035) representing the photographic images;

determining the total number of photographic images in each of the photographic image groups classified by the classifying portion (placing metadata for images containing e.g., a particular shape then automatically "determines" the total number of those photographic images for that particular metadata group by the classifier);

setting and storing, at a selection condition setting portion (fig. 5, item 526), selection conditions (the user requesting metadata sets and stores at item 514), after the classifying portion classifies the plurality of photographic images (items 522, 524 classifies and stores in item 526, then item 514 retrieves from item 526), based on image quality for each similar photographic image group having the classified plurality of photographic images based on the determined total number of photographic images, wherein when a total number of photographic images in one photographic group is larger than a predetermined threshold (the threshold value of "1"), the selection conditions are different than the selection conditions that are set for photographic groups having less than the predetermined threshold (a value of "0" is when the user selects photographs that have no corresponding metadata, and hence no images are extracted from item 526 to be edited at item 514; however, a value of e.g. "2" will extract two images with

corresponding metadata for the user to then edit; the selection conditions are different in that the prior example selected a group of 0 and the latter selected a group of 2);

extracting, at an extracting portion (fig. 5, item 514; fig. 6, item 616), photographic images from each of the photographic image groups classified by the classifying portion, that satisfy the set selection conditions as qualified photographic images;

differentiating, at the extracting portion, the qualified photographic images from the other photographic images (those images classified under a certain characteristic in memory 526 will be identified for editing in video editing system 514 is "differentiating" those images classified under a certain characteristic from the rest) and administering processed thereon (those images classified under a certain characteristic are then open for editing in system 514, and thus "administering processes thereon"); and

recording (fig. 5, items 504, 510, 526, and 519 are all recording means for storing the image data) the differentiated photographic images.

Claim Rejections - 35 U.S.C. § 103

[1] The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Kowald in view of Khan

[2] **Claims 1-2, 11, 13-15,** and **18-20** are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kowald* in view of U.S. Pub. No. 2003/0126121 (filed Jun. 21, 2002, *hereinafteer* "Khan").

Regarding **claim 1**, while *Kowald* discloses a photographic image ("photographer…capturing the image or image sequence" at ¶0037) selecting apparatus (fig. 5) comprising:

a classifying means (fig. 5, items 522, 524) for classifying a plurality of photographic images into similar photographic image groups ("[t]he visual language classification system 522 outputs classification data 524, configured as further metadata, which is associated with each

image…" at ¶0036; metadata for "features including landscape features…or other particular shapes…" at ¶0037; metadata for "time code and date data" at ¶0051), comprising photographic images which are similar to each other (photographic images in a video stream are "similar" to each other), the similarities being determined by analyzing ("content analysis to analyse the images residing in the store 510", at ¶0037) digital data ("digital video" at ¶0035) representing the photographic images;

a qualified photographic image extracting means (fig. 5, item 514) for extracting ("editing system 514 which extracts the appropriate images or sequence of images from the store 510" at ¶0047; ¶0048 for an example of "images that have been previously classified as a long shot") photographic images (at fig. 5, item 510), that satisfy previously stored predetermined selection conditions (¶0050; e.g., images classified now containing metadata for "sharpness, colour, content quality" at ¶0053 that were classified at items 522, 524) as qualified photographic images (those images in memory 510 classified under a certain characteristic in memory 526 will be identified for editing in video editing system 514), from each of the similar photographic image groups (Each frame/image is tagged with metadata including all identified characteristics of that particular frame. All frames/images with a particular metadata tag (*e.g.*, exposure amount) is a group, and it is possible for each frame/image to belong to multiple groups. Hence, each of the similar photographic image groups will be extracted in the editing system 514 when all images are searched for a particular metadata characteristic.), wherein the previously stored predetermined selection conditions related to image quality (¶0050; grouped metadata "sharpness, colour, content quality" at ¶0053 from the classifier item 524 "relate" to image quality); and

a differentiating and processing means (fig. 5, items 518, 519, 516) for differentiating the qualified photographic images from the other photographic images (those images classified under a certain characteristic in memory 526 will be identified for editing in video editing system 514 is "differentiating" those images classified under a certain characteristic from the rest) and administering processes thereon (those images classified under a certain characteristic are then open for editing in system 514, and thus "administering processes thereon"),

wherein:

the qualified photographic image extracting means (fig. 5, item 514; fig. 6, item 616) is equipped with a selection condition setting means (the processor at fig. 5, item 514; "[t]he system 514 then interrogates the store 526 to form a pick-list of images…" at ¶0048; ¶0048),

the selection condition setting means (the processor at fig. 5, item 514) sets and stores the selection conditions (whether temporary or not, item 514 receives image requests from the user and must store the image request; e.g., "long shot" request), after the classifying means (fig. 5, items 522, 524) classifies the photographic images (items 522, 524 classifies and stores in item 526, then item 514 retrieves from item 526), for each similar photographic image group (fig. 5, item 514 is responsible for selecting the set for each similar photographic image group; ¶0048); and

a recording means (fig. 5, items 504, 510, 526, and 519 are all recording means for storing the image data) for recording the differentiated photographic images (those images classified under a certain characteristic in memory 526 will be identified for editing in video editing system 514 is "differentiating" those images classified under a certain characteristic from the rest), *Kowald* does not teach the selection condition setting means so as to be stricter for photographic image groups having a greater number of photographic images included therein.

Khan discloses a method for remotely searching biometric data (including face recognition) that includes a selection condition setting means (fig. 10) that sets the selection conditions for each similar photographic image group ("photographs of a group of individuals of interest" at ¶0023), so as to be stricter for similar image photographic image groups having a greater number of photographic images included therein ("[a]lternatively, the search engine may be programmed by the user to select a predetermined number of top matches and send those to the workstation 1026" at ¶0052; if a predetermined number of top matches is selected (*e.g.,* 10), then the more images in a given group would have to have stricter rules because only 10 must be selected (*i.e.*, selecting 10 images from a group of 100 images would not incorporate as many strict rules needed for selecting 10 images from a group of 1000 images).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of *Kowald* to include so as to be stricter for photographic image groups having a greater number of photographic images included therein as taught by *Khan* (i.e., e.g., to allow the user at item 514 to not select all images of a "long shot",

but instead 10 images of a "long shot" to find the best 10 images out of a set more than 10 images) "to provide a system and method for searching biometric data over a network", *Khan*, ¶0009 and "to provide a system and method that uses the Internet as a communication infrastructure to enable time and cost-effective information sharing of biometric information between organizations", *Khan*, ¶0010.

Regarding **claim 2**, *Kowald* discloses wherein:

the predetermined selection conditions include image quality levels ("image quality analysis" in ¶0053]).

Regarding **claim 11**, *Kowald* discloses wherein:

the differentiating and processing means (fig. 5, items 518, 519, 516) performs processes wherein only the qualified photographic images (those selected by the user by metadata) are printed (fig. 6, item 615).

Regarding **claim 13**, *Kowald* discloses wherein:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) performs processes wherein the qualified photographic images and the other photographic images are differentiated (¶0047]), then recorded in the recording means (fig. 5, item 519), the qualified photographic images being stored separately from the other photographic images (memory is comprised of addresses, specific addresses containing information for specific images; qualified photographic images are "stored separately" with respect to their address locations from the other photographic images, even if all images are stored in the same memory).

Regarding **claim 14**, *Kowald* discloses wherein:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) performs processes wherein only the qualified photographic images are recorded (from ¶0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in items 516, 518, 519) in a recording medium (fig. 5, item 519; ¶0036]).

Regarding **claim 15**, *Kowald* discloses wherein:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) is a display means (fig. 5, item 518); and

only the qualified photographic images are displayed (from ¶0036], the video editing system 514 grabs only the frames/images from database 510 that pertain to metadata characteristics stored in database 526 to be further processed in items 516, 518, 519) thereby.

Regarding **claim 18**, claim 1 cites identical features as in the computer readable medium having recorded therein a program that causes a computer to execute selection of photographic images (fig. 6; ¶0062) of claim 18. Thus, references/arguments equivalent to those presented above for claim 1 are equally applicable to claim 18.

Regarding **claim 19**, *Kowald* discloses the photographic image selecting apparatus of claim 1, wherein the qualified photographic image extracting means (fig. 5, item 514; fig. 6, item 616) extracts ("editing system 514 which extracts the appropriate images or sequence of images from the store 510" at ¶0047; ¶0048 for an example of "images that have been previously classified as a long shot") photographic images that satisfy predetermined selection conditions (¶0050; "sharpness, colour, content quality" at ¶0053) , said predetermined selection conditions being based on image quality (¶0050; "sharpness, colour, content quality" at ¶0053).

Regarding **claim 20**, *Kowald* discloses the photographic image selecting apparatus of claim 1, wherein the predetermined selection conditions (¶0050; "sharpness, colour, content quality" at ¶0053) are related to at least one of degree of exposure, degree of defocus, degree of blur ("sharpness, colour, content quality" at ¶0053, *emphasis added*), degree of defocus of a facial portion, and whether an eye of a subject being photographed is open.

Kowald in view of Khan and Bhatt

[3] **Claims 5** and **9** are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kowald* in view of *Khan* and U.S. Pub. No. 2002/0118883 (filed Feb. 24, 2001, *hereinafter* "Bhatt").

Regarding **claim 5**, while *Kowald* in view of *Khan* discloses a photographic image selecting apparatus as defined in claim 3, *Kowald* in view of *Khan* does not teach wherein the selection condition setting means sets the selection conditions so that at least one qualified photographic image is extracted from each of the similar photographic image groups.

Bhatt discloses a classifier-based enhancement of digital image (fig. 5) wherein a selection condition setting means sets the selection conditions (fig. 5, items 40, 45, 50, 65, 55) so that at least one qualified photographic image (¶0032; fig. 5, item 20, "photo quality" in ¶0008)

is extracted ("Each image after enhancement goes through a file size check in item 45." in ¶0032; ¶0032) from each of the similar photographic image groups ("Image Enhance GROUP 1" through "Image Enhance GROUP N" in fig. 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of *Kowald* in view of *Khan* to include setting the selection conditions so that at least one qualified photographic image is extracted from each of the similar photographic image groups as taught by *Bhatt* "…to provide a novel automated method with minimal manual interactions to enhance the images from diverse sources.", *Bhatt*, ¶0009.

Regarding **claim 9**, while *Kowald* in view of *Khan* discloses a photographic image selecting apparatus as defined in claim 3, *Kowald* in view of *Khan* does not disclose wherein the selection condition setting means sets the selection conditions according to a specified number of qualified photographic images to be extracted from each of the similar photographic image groups.

Bhatt discloses a classifier-based enhancement of digital image (fig. 5) wherein a selection condition setting means (fig. 5, items 40, 45, 50, 65, 55) sets the selection conditions (fig. 5, item 65; "parameters" in ¶0032; ¶0032) according to a specified number (the specified number is all images in each Image Enhance GROUP, whatever that number may be) of qualified photographic images (¶0032; fig. 5, item 20, "photo quality" in ¶0008) to be extracted from each of the similar photographic image groups ("Image Enhance GROUP 1" through "Image Enhance GROUP N" in fig. 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the selection condition setting means of *Kowald* in view of *Khan* to include setting the selection conditions according to a specified number of qualified photographic images to be extracted from each of the similar photographic image groups as taught by *Bhatt* "…to provide a novel automated method with minimal manual interactions to enhance the images from diverse sources.", *Bhatt*, ¶0009.

Kowald in view of Khan and Sano

[4] **Claim 12** is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kowald* in view of *Khan*, and U.S. Patent No. 6,079,885 (issued Jun. 27, 2000, *hereinafter* "Sano").

Regarding **claim 12**, while *Kowald* in view of *Khan* discloses a photographic image selecting apparatus as defined in claim 1, wherein *Kowald* discloses:

the differentiating and processing means performs process wherein the qualified photographic images and the other photographic images are printed (fig. 6, item 615), *Kowald* in view of *Khan* does not teach wherein the other photographic images are printed at different sizes.

Sano discloses a printer with variable image processing corresponding to image size (fig. 1) wherein photographic images (3:28 - 29) are printed in different sizes ("image 1" and "image 2" in fig. 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for the differentiating and processing means and printer of *Kowald* in view of *Khan* to include printing the qualified photographic images and the other photographic images of *Kowald* in view of *Khan* in different sizes as taught by *Sano* "...to produce high quality prints by changing the type of image processing and the amount of correction corresponding to the size of each printed image.", *Sano*, 2:3-5.

Kowald in view of Khan et al and Tsukagoshi

[5] **Claim 16** is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kowald* in view of *Khan* and U.S. Patent No. 5,848,217 (issued Dec. 8, 1998, *hereinafter* "Tsukagoshi").

Regarding **claim 16**, while *Kowald* in view of *Khan* discloses a photographic image selecting apparatus as defined in claim 1, wherein *Kowald* discloses:

the differentiating and processing means (fig. 5, items 518, 519, 516; fig. 6, item 616) is a slideshow display means (fig. 5, item 518 wherein a display constitutes a "slideshow"); and

the qualified photographic images and the other photographic images (If two metadata characteristics are extracted from video editing system 514, groups A and B are formed-slides with characteristics of one metadata (group A) and slides with characteristics of the other metadata (group B). All slides with both metadata characteristics are displayed (groups A and B), and if group A is the "qualified photographic images" with respect to one metadata

characteristic, then group B would be the "other photographic images".) are displayed as slides for display durations, *Kowald* in view of *Khan* does not teach displaying different durations.

Tsukagoshi discloses subtitle encoding/decoding method and apparatus (fig. 1) wherein slides ("plurality of video frames" in 6:23-39) are displayed in different durations (6:23-39 wherein subtitles are longer in time duration that the video frame).

It would have been obvious to one of ordinary skill in the art at the time the invention was made for slideshow display means of *Kowald* in view of *Khan* to display the slides at different display durations as taught by *Tsukagoshi* "for encoding subtitles to be played back exclusively during the trick playback mode, i.e., during fast, slow or reverse playback modes.", *Tsukagoshi*, 2:61-64.

Conclusion

[8] Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID P. RASHID whose telephone number is (571)270-1578 and fax number (571)270-2578. The examiner can normally be reached Monday - Friday 7:30 - 17:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David P. Rashid/
Examiner, Art Unit 2624

/Bhavesh M Mehta/
Supervisory Patent Examiner, Art Unit 2624

David P Rashid
Examiner

Art Unit 26244